

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GEORGE BUSTOS,

Plaintiff,

vs.

FLAGSTAR BANK F.S.B., PINGORA
LOAN SERVICING, LLC,

Defendants.

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SA-19-CV-00997-FB

ORDER

Before the Court in the above-styled cause of action is Plaintiff's Motion for Leave of Court to Amend Pleadings [#9]. By his motion, Plaintiff George Bustos asks the Court for permission to amend his pleadings to address the defects identified in Defendants' pending Motion to Dismiss. Plaintiff's motion to amend should be granted.

A party may amend its pleading once as a matter of course within 21 days of service of a Rule 12(b) motion. Fed. R. Civ. P. 15(a)(1)(B). This is Plaintiff's first request to amend. Rule 15(a) declares that leave to amend "shall be freely given when justice so requires." *See also Lowrey v. Tex. A & M Univ. Sys.*, 117 F.3d 242, 245 (5th Cir. 1997) ("Rule 15 expresses a strong presumption in favor of liberal pleading"); *Dussuoy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597–98 (5th Cir. 1981) ("[Rule 15] evinces a bias in favor of granting leave to amend.").

Where an amended pleading makes substantive changes to a complaint, the better course is to dismiss a pending motion to dismiss without prejudice so the Court can consider the motion as to the live pleading on a clear record. *See Maxim Integrated Prods., Inc. v. State Farm Mut. Auto. Ins. Co.*, No. SA–14–CV–1030–XR, 2015 WL 10990119, at *1 (W.D. Tex. Feb. 12, 2015) (dismissing motion to dismiss as moot in light of substantive changes to complaint affecting

motion's resolution). Although this may inject an additional step for Defendants, refiling the motion as to Plaintiff's Amended Complaint will place this case in the best procedural posture for resolving the issues raised in Defendants' motion to dismiss and response to Plaintiff's motion for leave to amend.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Leave of Court to Amend Pleadings [#9] is **GRANTED**.

IT IS FURTHER ORDERED that the District Clerk docket Plaintiff's First Amended Original Complaint [#9-1] as the new live pleading in this case.

IT IS FURTHER ORDERED that Defendants' Motion for Judgment on the Pleadings [#5] is **DISMISSED WITHOUT PREJUDICE** to refiling with respect to Plaintiff's Amended Complaint.

SIGNED this 29th day of October, 2019.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE